

Mary DePrez We're here to hear Indiana Wholesale Wine and Liquor Company present their case to the Commission.

Peter Rusthoven Thank you, Madam Chairperson. I'm Peter Rusthoven with Barnes & Thornburg, here representing Indiana Wholesale Wine and Liquor Company. With me in the room are James Howard, who is the president of Indiana Wholesale, and also my colleague, Jerimi Ullom. I so want to thank you for not moving me after the Adjournment. Also sitting next to me is Brian Tuohy, who is counsel for United States Distilled Products. This is in fact a joint request by Indiana Wholesale and USDP. I think Mr. Tuohy will identify the persons present with him and will probably speak first.

Brian Tuohy Thank you, Madam Chairman. Again, my name is Brian Tuohy. I'm a lawyer with Stark Doninger & Smith. Here with me today from Princeton, Minnesota, he just got in this morning, is Todd Geisness. He's the general manager and executive vice president of United States Distilled Products, which if it is okay I'll call USDP.

DePrez Please do.

Tuohy Thank you. We have never represented Déjà vu Showgirls. I want to make sure the record is clear on that.

Rusthoven Nor is either of us a witness to anything that may have occurred there.

Tuohy My associate, Clay Patton, even though his is from up north, has not represented Phealy, Inc. United States Distilled Products is a Princeton, Minnesota based rectifier and bottler of

liquor. I learned recently that a rectifier means they blend product that people that have the recipes for for liquor, so that XYZ company has a recipe for liquor and they will blend those recipes as directed and bottle them. What we're here today requesting the Commission do is to terminate a sales, or a settlement agreement so that USDP can sell a product to Indiana Wholesale, which is an Indiana based wholesaler, and that Indiana Wholesale can buy this product from USDP. I think there is significant history here, but if I could just have a minute of the Commission's time to sort of lay this out from USDP's perspective, I would appreciate that. USDP, as I said, is a contract bottler. About in 1997, another company, and I'll throw out three names here, USDP and Phillips and also Indiana Wholesale. Phillips was one of those companies that, Phillips Products, that had a recipe for a type of, several types of liquors. And for years, Phillips sold their products directly to Indiana Wholesale. But some years ago, I think in 1994, Phillips got out of the business of bottling and instead became a sales organization. And the way they got out of the business of bottling was they entered into a contract with USDP in Minnesota to bottle their recipes. And at that time in 1994, the Commission was advised that that happened, that Phillips was getting out of the bottling business. And the reason you all were advised of that was because there was a restriction on USDP doing business with Indiana Wholesale. So we had this situation where Indiana Wholesale was buying these Phillips

products from Phillips, but Phillips got out of the bottling business and made an Agreement with USDP where they'd bottle their product. And there was a Settlement Agreement entered into, which allowed this relationship of Phillips would have its products bottled by USDP and then Indiana Wholesale wanted to sell those Phillips' products. That worked fine for a number of years, but in 2001, just this last November, something changed pretty significant to USDP. The Phillips Company represented about a third of their business. That is, if they bottled 1,800,000 cases a year, and that's about what they did, 600,000 were this Phillips recipe product. And Phillips decided to sell itself. They had a bid, a competitive bid. A number of people were interested in that product, this Phillips brand, cause it was growing. And in a minute I'll talk to you about how it grew in Indiana. But Mr. Geisness and his company were the winners of that. They ended up acquiring Phillips' product. So before, they were a bottler of this Phillips' product. Now, they bought the company and Phillips became a wholly owned subsidiary of USDP. As soon as that happened, or simultaneously with that happening, I believe the Chair was approached and advised of this situation. So before when you had a settlement agreement that the situation could be maintained in place, it couldn't be anymore because now Phillips was owned by USDP and the only place where Indiana Wholesale could get this product was from USDP, once they acquired it. The reason that is significant is that Indiana

Wholesale was able to grow the Phillips' product in Indiana and grow it pretty significantly. It went from about 7,000 cases in 1999/2000 year to almost 24, 000 in 2001, so there was about a 3+ times growth of that product. That growth makes it significant to USDP. It makes it, I think, very significant, as Mr. Rusthoven would say, to Indiana Wholesale. But it's very important to USDP. When that situation happened, I believe what happened next is the Commission allowed this arrangement to start in place. That is the arrangement whereby Indiana Wholesale can continue to sell Phillips' products and they were acquiring those now from Phillips, but was now owned by USDP. So that change in the ownership that Phillips was purchased by USDP, which was important to USDP because it wanted to preserve that Phillips' brand. It was Phillips' brand represented about a third nationally of USDP's sales. That change brought us here today because that Settlement Agreement restricted this arrangement from going forward. And so since November, the status quo is that these Phillips' products have been continued to be sold by Indiana Wholesale and Phillips' products is now owned by USDP. In, in, in... I don't want to use the word distilling. In breaking it down, what we really want to do is maintain today what has been in place since November and that is to allow Indiana Wholesale to continue to sell these Phillips' products. In summary, the importance of that to USDP is that Indiana Wholesale is really the only outlet for these Phillips' products.

No one else in Indiana sells them. Indiana Wholesale has done a good job of developing that brand, developing the amount of sales. Phillips' products are a competitive brand, which if this is not allowed to continue, will lessen the competition in the state. It's a competitively priced brand. Indiana is a growing market as evidenced by the tripling of sales that I mentioned and USDP would like to retain that growth. Frankly, that's part of the reason USDP bought Phillips. It not only represented a third of their business on a national scale, but they could see that Phillips was a growing brand and that's why they outbid other people for it. If we can't sell Phillips' products, if Indiana Wholesale can't sell Phillips' products, there would be less competition and, of course, that would be harmful to USDP. There's been significant sums and energy spent promoting Phillips' products here in Indiana. And I think that work is starting to, coming to fruition now and so we would appreciate the Commission's consideration of our request to terminate the Settlement Agreement primarily because the framework of the relationship of USDP and Phillips' products has changed now. USDP is now the owner of that company, as opposed to before just being a contract bottler. We'd try to answer any questions you might have and thank you for having us here today.

DePrez Okay. Mr. Rusthoven?

Rusthoven Thank you, Madam Chairman. Thank you and other members of the Commission, who were copied on all the correspondence, for being willing in light of the new circumstances to allow

Indiana Wholesale to acquire Phillips' products pending the Commission's consideration of this joint request, which is starting now. I would like to give some, Mr. Tuohy has covered an awful lot of the background and I will try not to retrace his steps too much. I also want to describe another aspect of the change in circumstances and that gets to the reasons going back to the beginning for the Agreement by Indiana Wholesale not to do business with USDP and the reasons for the restriction have also changed and have changed in an enormous and significant way. Let me just cover some housekeeping also. A letter describing the facts was addressed to the Vice Chair and distributed to other Commission members and that was on February 15, 2002, and we'll be supplying to Madam Chew. Essentially that letter will be submitted attached to three different declarations just establishing the facts of record. Those declarations will be by Mr. Howard, president of Indiana Wholesale, who will essentially attest to the truth of the letter as it relates to Indiana Wholesale, by Mr. Geisness for USDP, who will do the same attestation as to USDP. And, there are a few brief facts I will also describe with respect to another company, Johnson Brothers that will be attested to by declaration of Scott Belsaas. So, that will all be formally part of the Commission's record of this request. The background for why Indiana Wholesale voluntarily agreed way back in the beginning not to do business with USDP is essentially this. When Indiana Wholesale made its initial permit applications in 1987, the

primary controversy with respect to those applications was whether Indiana Wholesale's corporate ownership structure complied with Indiana residency requirements. That issue ultimately ended up being involved in two pieces of litigation, which finally ended up in front of the Indiana Supreme Court in which the Indiana Supreme Court many years later upheld the Commission's decision that Indiana Wholesale met residency requirements and met the qualifications for a wholesaler permit. Because there was some competitive disinterest in Indiana Wholesale being permitted, one of the issues raised at the time of the initial application was an allegation, which I don't mean to be a loaded term, that if Indiana Wholesale did business with United States Distilled Products, some issue might be raised with respect to the three tier system and that assertion was made because at that time two of the wholesalers of Indiana Wholesale were Lynn Johnson and Mitchell Johnson, who are brothers. At that time, the ownership of USDP were four children of Lynn or Mitchell Johnson, and don't hold me to this, who I think may have been in their 20s or 30s at that time. Because the residency issue was the large issue and to avoid distraction of that and what we perceive to be a side issue, Indiana Wholesale said, "Look, we don't agree with this, but let's just take this off the table. We voluntarily will not do business with USDP and let's just focus on the residency issue." That Agreement was made. Permits were granted in 1987. During the period between 1987 and 1994 as Mr. Tuohy

mentioned, Indiana Wholesale purchased a lot of products directly from Phillips, which at that time would stand alone, if you will, doing its own bottling. In 1994, Phillips entered into a bottling contract with USDP. The Commission was apprised of that. The arrangement, whereby Indiana Wholesale would still buy Phillips' products even though they were being bottled by USDP, was approved. In 1996, some issues arose and (inaudible) because of misunderstandings on both sides with respect to compliance with that. The ultimate result to these misunderstandings being resolved was that a Settlement Agreement was entered which essentially formalized certain aspects of the procedures by which Indiana Wholesale would indeed be buying from Phillips even though USDP was doing the bottling. Indiana Wholesale quite candidly (inaudible) has never liked this restriction, never believed it was appropriate, at various times asked that it be lifted and it has not. But there has been no issue about compliance with the '96 Settlement from any material thing. Indiana Wholesale has been doing what it said it would do and the Commission's been fine with it. The facts have now changed, not just for the reasons Mr. Tuohy has described, although that's important. But the facts have also changed with respect to the ownerships involved. Specifically when this situation arose, when Indiana Wholesale learned that USDP was going to be buying Phillips and it wouldn't be able under Settlement to get it, Indiana Wholesale approached Lynn Johnson, who has been a shareholder of Indiana Wholesale

from the beginning said, "Look, it is clear that from the past requests we've made to the Commission with respect to this restriction that if you have a shareholder interest in Indiana Wholesale, and if USDP is owned by your son"...and by this time USDP was owned solely by Brad Johnson, who is now a 40 year old attorney, is the sole owner of USDP. He also said basically to Mr. Johnson it's clear if you continue to be a shareholder, we do not think the Commission will act favorably on our request to eliminate this restriction. Mr. Johnson, therefore, essentially sold all of his shares back to the company, resigned all positions with the company and is no longer involved in Indiana Wholesale in any way. So we've had, in summary, the following significant changes over the years and some are very recent. With respect to ownership of USDP, it has changed from being owned by several much younger children of Lynn and Mitchell Johnson to now owned by a single, if Brad Johnson were here I think he'd forgive for saying much older, son of Lynn Johnson. Second, with respect to Indiana Wholesale, it is now no longer an entity in which Lynn Johnson has any shareholder interest or any officer, director, manager, or any other involvement. The only Johnson who remains a shareholder of Indiana Wholesale is Mitchell Johnson. Mitchell Johnson is in his 60s. He is Brad Johnson's uncle. One other fact about Mitchell Johnson and it's a change over the years and should be noted. Lynn and Mitchell Johnson have long been owners of another wholesaler called Johnson

Brothers Liquors, which is located in Minnesota and operates beyond the shores of Minnesota as well. That is no longer true as to Mitchell Johnson and that has not been true of Mitchell Johnson for some time. Mitchell Johnson, as I said, is in his 60s and I think about five years ago began the process of retiring from Johnson Brothers, no longer is a shareholder, officer, director, manager, etc. of Johnson Brothers. I mention this only because if there was any concern that there was some indirection connection through Johnson Brothers, now even that is no longer there. You rather have a situation where an uncle, who is essentially retired from the liquor business as a shareholder and holds some positions with Indiana Wholesale and his 40-year-old nephew is the sole owner of USDP. Respectively submit, without getting into different views people may have had in the past about whether the restriction never should have been there, never should have been lifted on the facts as they now exist that show objective basis for continuing any restriction on Indiana Wholesale being able to do business with USDP. And one further legally kind of point about that, which I think should be noted, the underlying provision here is 7.1-5-9-8. What this does is prohibit the holder of a distiller's or rectifier's permit from having interest in a wholesaler. It is a one-way thing. It does not prevent a wholesaler from having an interest in a distiller or rectifier or influence over it or anything of the like. Why do I say this? Two reasons. One, just history every once in awhile gets into this. All of these three tier

restrictions date back to the era immediately after prohibition and involved, so called "Tide House" arrangements, where people higher in the tiers were controlling people lower in the tiers. That's where it comes from. That's the purpose of them. Here I don't think there has ever been an argument, certainly there is not an argument, that the 40-year-old nephew is controlling his older and much more experienced and now retired uncle. It's the 40-year-old nephew that is on the distiller/rectifier side. It's the uncle who is on the wholesaler side. So this is a further reason. You know, there may have been some argument in the past about whether fathers and sons and younger children that can influence on the rectifier. But in fact, the prohibition runs the other way if you follow me. I'm sure you do, if I stated it clearly. That's what I'm uncertain about. But in all events, that's just a further reason why we respectfully submit that there's really no basis for this restriction or the settlement order, which effectively implements some procedures for that restriction to continue. With respect to the economics, Mr. Tuohy has described the economics and the impact on competition from the USDP standpoint. From the Indiana Wholesale standpoint, Phillips' brands now owned (inaudible) from USDP, represent about 29% of Indiana Wholesale's liquor business. They represent a smaller percent of its overall business. I believe it's 9%, if the correct figure is stated in the letter, because Indiana Wholesale also sells wine. But the ability to sell Phillips' products is also practically

significant even from the wine side of the business because being able to supply the Phillips' brands from the liquor side is, in fact, critical to several of the Indiana Wholesale customers in terms of whether they'll buy anything from them at all, including wine. Also in terms of the overall bottom line profitability, this portion of the business is pretty critical to this business at the end of the day showing profit. As Mr. Tuohy has noted, this will also prevent Phillips' brands, which are competitive with brands sold by other wholesalers, will effectively keep those brands out of the market in Indiana. Indiana Wholesale has 42 employees. This is not generally economic times in which we want to discourage competition on thriving business. The last point has to do with overall competition in the wine and wholesale business itself. That's significantly contracted over the years. There are two major, other wine and liquor wholesalers who have been very successful and we congratulate them for that. I believe they control somewhere between 85-90% of the overall wine and liquor wholesale market. Indiana Wholesale is probably the largest of the remaining ones beyond those two, but as you can see it's a much smaller share. There may be one or two others. We simply don't know. Basically we're down to what is largely a two-person (inaudible) with one other competitor sort of in there. And the impact of continuing this restriction could shrink that even further, which for policy reasons is yet another reason why I think this restriction whose factual basis no longer

really exists. We respectfully request that you lift it. I think you for your patience. Mr. Howard is available to answer any questions, as is Mr. Tuohy's client, and obviously the two of us will do the best we can with any questions you have.

Barbara Glass I have...I just didn't hear. Indiana Wholesale, what percentage is their liquor from USDP?

Rusthoven The Phillips' business, which is from USDP now (inaudible) temporary approval. Phillips' brands represent approximately 29% of Indiana Wholesale's liquor side of its business and something just short of 10% of its overall business, which includes wine, specifically a lot of Gallo wine.

Glass Okay. So, it's 20% of their...

Rusthoven Twenty-four percent. Twenty-nine, did I say...Twenty-nine percent.

DePrez You said 29.

Glass Okay. I just missed that.

Tuohy It was 24,000 cases.

Rusthoven Twenty-four thousand cases.

Glass I got that.

DePrez Other questions?

Gigi Marks I have some questions. I don't really understand how the two of you are sitting here together. I totally can understand where you are coming from, Mr. Rusthoven, because you're client needs this product to continue to grow their business. But my question for you, Mr. Tuohy, and maybe Mr. Geisness also...I mean, I think most businesses are in business to make money

for their owners (inaudible). If Indiana Wholesale Wine and Liquor is not an option to market the product in Indiana, have you opened talks with any of the other wholesalers and, do you know, are they not willing to take on this product? What is the status of that because there are other places that you can market the product in Indiana?

Tuohy Let me have Mr. Geisness answer most of that. The answer is the other wholesalers, their brands that they represent, will not be interested in those other wholesalers picking up Phillips. I think that will be the answer and he can flush that out for me.

Todd Geisness First of all going back to the Phillips acquisition a little bit...

Marks Is it picking him up?

Geisness What?

Marks I just wanted to make sure that we have him.

Geisness Okay. The key element for us was to bring along Dean Phillips with that whole transaction. Dean Phillips is the president of the Phillips Company under USDP and his whole sales force came along with that. It was very critical to us in getting to the brand business now and owning Phillips that we maintain that relationship with our customers and develop the Phillips' brands within that base that's already been developed. And when I've talked to Dean Phillips about that exact question that you raised, he's the person who's dealing with Jim Howard, dealing with the other wholesalers and basically his comment to me was that the brand Phillips would die in the State of Indiana, if he can't go through Indiana Wholesale.

Tuohy Is it true that the other brands that are sold to the other wholesalers would resist those other wholesalers picking up Phillips' brands? Why would they resist that?

Geisness It's competition, basically. You already have relationships established with other customers that are supplying you vodkas and types of products Phillips represents and bring that in and you're taking away sales from those items and substituting it with Phillips. And there's a lot of work and energy that goes into developing a brand, developing and promoting a brand and all that is a relationship type of a situation. And this is even prior to USDP owning Phillips that Dean Phillips had developed this relationship with Indiana Wholesale. We just think it's important to the brand to maintain that continuity and (inaudible) brand here in the State of Indiana.

Tuohy Maybe the answer is is that with the growth of Phillips that I described from 7,000 to 24,000 cases, the other brands are not going to want their wholesalers taking on something that would erode their sales. That would be sort of logical. And so, it would be difficult if not impossible for USDP to find another outlet other than Indiana Wholesale because of what Mr. Rusthoven said, there's only a few wholesalers in the State of Indiana. And, the big ones will resist having that brand.

Marks But do you know that, or are you just saying this? Have you talked to them? I mean...there was something that was submitted to us that was over a page listed of different brands. So, every wholesaler has lots of different brands and I was

under the impression that a lot of the Phillips' products went to a few retailers, so you know those retailers are not buying something else right now, they're buying Phillips. So, if it switches from one wholesaler to another, what's the...

Tuohy If another wholesaler will take it. And the other wholesaler will be under pressure from their manufacturers not to take it because it's less expensive and if they could get rid of that competitor that's gone from 7,000 cases to 24,000 cases, they would pressure their wholesaler and do that.

Marks I understand.

Tuohy Our thinking is that it would be hard to find another wholesaler.

Marks We need to stop for a second. So there haven't been any talks or have there been any discussions with any other potential wholesalers?

Geisness As far as the Phillips' brands, I really honestly don't know because that's all handled through, like I say, our salesperson, Dean Phillips. I can only go by the conversations I've had with him that his opinion is that, cause I've asked this exact question to him, "why can't this go to somebody else and try to sell that in the State of Indiana through those other wholesalers?" He just feels that it would not survive and not get the attention because, or the Phillips' brands fall in priority of the other brands that those companies have.

Marks Um hum.

Tuohy And we're talking about a pretty long relationship here.

Marks I understand that. You know, money is money.

Tuohy	There's no question about that.
Marks	What is the address of USDP where the Phillips' products are being rectified?
Geisness	1607 South 12 th Street, Princeton, MN 55371.
Marks	And Mr. Rusthoven, a question for you? Is L & M Holding Company still in existence?
Rusthoven	<p>You know, I don't know the answer to that question. I do know that L & M Holding Company, in my recollection, is that L & M Holding is some kind of real estate venture owned separately. I think the (inaudible) Mitchell Johnson. To the extent that that has ever been discussed in the past, I think it's been established of record that there may have been lease arrangements. I have no idea if those lease arrangements are in place now, but every lease arrangement there may have been with any other company was commercially reasonable rates. We can supply any information on that.</p>
Marks	I would be interested in knowing if it's still in existence.
Rusthoven	Okay.
Marks	<p>Also, in looking over some of the material that you had submitted to us after the 1996 Settlement, I wanted to give you this. This is part of the confidential information, so I don't really think I need to make it public. But, I would appreciate it if you could take a look at this and...</p>
DePrez	Is this from his client?
Marks	This is from Indiana Wholesale?
DePrez	Okay, because I don't want to release confidential information.

Glass	He gave that to us.
Marks	I thought it would be something you could look at and see if that's still...and that was submitted on August 8.
Rusthoven	Your inference that I...any inference that you have that I understood this chart either at that time or now is probably not founded, but...Also, excuse me, Commissioner Marks, on housekeeping matters, I failed to mention the affidavit from Mr. Howard, the Declaration attesting to the truth to the February 15 th letter as it relates to Indiana Wholesale will also attach documents demonstrating the redemption of Mr. Johnson's shares and that he is no longer an officer, director, etc. Sorry, thank you.
Marks	Mr. Geisness, maybe you could talk to Mr. Phillips about what we've discussed here a little bit more and maybe put something down on paper as to what he's looked into.
Geisness	Sure.
DePrez	Is that it?
Marks	That's all my questions.
Glass	I have one. Just some information that I think would be helpful to the Commission when we decide this, I think what we need to see is that the three-tier system is still, you know, in effect and everything. So I think just all the owners and officers of Indiana Wholesale and USDP, and of course these would be separately, but any loans between any of the common entities or if there are none, I'd like that certified, also leases, contract services. If any of those exist between any officers or owners

that we be made aware of them. If they don't exist, be aware of that also. I think that would be helpful to us.

Tuohy Okay. When would you like this information?

Glass I mean, how quick, I mean?

Tuohy A week from today?

Glass If that's possible. I mean, if that works okay with you, that's fine. How about we say two weeks. Why don't you have, you know, two weeks?

Tuohy Whatever your schedule is, we'll meet it.

Rusthoven Why don't we make a...I appreciate the flexibility. Let's make it the next scheduled meeting of the Commission is...

Marks March 5th.

Rusthoven March 5th. Certainly in advance of the March 5th meeting.

DePrez Are you going to be here on that March 5th meeting?

James Davis No. I won't be.

DePrez So, I don't think it needs to be in advance of that meeting, but maybe by that meeting, because I don't think this will be acted upon by the Commission until Commissioner Davis is back.

Tuohy That's fine. We'll get you that information.

DePrez If there's any brief memo that could be prepared besides what we have here. You, Mr. Rusthoven, talked about 7.1-5-9-8, maybe apply that to the facts here. How you see it. I don't know if there's any case law that would be relevant at all, but if there's any memo maybe that you could put together on that, I think that would be helpful as well. I guess I reserve the right

then if we need any further information, that we can just ask for it.

Tuohy We have no problem with that.

Rusthoven You have that right without reserving it.

DePrez I guess, a Commissioner had asked me, this meeting I know this was on the agenda today, what, if any, there might be as far as possibly your competitors' objection to or disagreement with the position that has been addressed here today and I'm not sure how the other Commissioners feel about possibly putting on an agenda, maybe the next meeting when you're back, if there's anyone that would like to come forward and present contrary information to what's been presented today. I think we'd like to give that opportunity to some folks. So when are you back?

Davis The second meeting in March.

DePrez The 19th. So why don't we schedule that opportunity for March 19th. I'm sure the word will pass once this meeting is over and we will try to get the word out as well to anyone and to all of our partners.

Rusthoven Obviously we have no objection to anybody saying anything they want about any matter before the Commission. The only observation I would make with respect to comments by competitors, that's fine. Those are indeed public comments. These are matters that affect the conditions of Indiana Wholesale's permits. As long as it's understood, it's certainly our position and courts have upheld this, including this Commission making this very point, that competitors do not

have some kind of legal standing to challenge the Commission's decision with respect to Indiana Wholesale's permits or its conditions.

Tuohy From USDP's standpoint, I'll ask the Chair, is there any contrary testimony today or is there anyone here today objecting to this that's registered?

DePrez If they're here, raise your hand. Nobody has officially registered to speak out against, but there might be some interested parties on the back wall.

Glass We do see some hands back there.

Tom Ristine Madam Chairman, my name is Tom Ristine. I'll be brief. Two years ago, the firm of Ice Miller, on behalf of Wine and Spirits Wholesalers of Indiana, wrote a four-page letter with extensive exhibits and attachments talking about...including some transcripts, excerpts from hearings long, long ago. Sitting here, I'm marveled by the way of your ability to wrestle with all the facts here. I've heard five or six or seven corporate entities mentioned. This is a complex matter. I'll say now what we said in May of 2000, and that is we're somewhat at a loss to be able to intelligently and productively from your standpoint contribute anything to this because of our being in the position of having no investigatory powers or perhaps you could give us the ability to cross examine the witnesses here as to what the facts are. We're not disputing the facts, but we have no basis of confirming them either. We welcome the opportunity to (inaudible) in this next session that you described to do some

more homework and to figure out what ties do or don't exist the best we can figure out from 600 miles away between Johnson Brothers and Phillips Wine and Spirits and US Distilled Products and Indiana Wholesale. This is complex stuff. The Commission labored long and hard years ago. Maybe things have gotten simpler and separated out, maybe they haven't. We simply can't tell. Thank you.

DePrez Any comments. I don't think we want to get into a cross-examination.

Tuohy We just wanted to know if there was any people that were interested.

Rusthoven The Chair has anticipated the only comment I would have had, which is with respect to setting up some kind of adversarial cross-examination by people who aren't parties. Obviously we will submit information and when submitted it will be public record, with respect to Indiana Wholesale, USDP, L & M, whatever. I will say that certainly we will resist efforts to make this seem more complicated than it is. Bottom line is the restriction was there because Lynn Johnson and Mitchell Johnson owned shares of Indiana Wholesale and four of their children owned shares of USDP. And, now we have one retired uncle, who owns shares of USDP, is not involved in Johnson Brothers and whose 40-year old attorney son is the sole owner of USDP. I think the expositive facts are pretty simple, but we'll supply information of course. The qualification with respect...I don't think we've gotten into this now.

Commissioner Marks' courteous reminder about some information was proprietary and was sent on a confidential basis. If we get into any of that, we'll identify why it is.

DePrez I believe the letter of authority you received from me in November, that will continue you through until a decision is made by the Commission. I think the letter was granted to that effect.

Rusthoven That's certainly our...thank you very much.

DePrez As far as how much time people have to get to the bottom of whatever is going on, they're suspicious or want to have ample time to investigate the facts, it may be a little more time consuming than the next meeting in March. I'm going to be inclined at this point and time just so it doesn't get too drawn out, to be pretty flexible on what the needs are of the various interests here and as long as we can not delay it too long. Any other comments? So obviously we will wait further information from both of you and probably we'll have additional requests as we move through this. We will go ahead and schedule this for the March 19th meeting as far as any input or further discussion to be presented to the Commission on this matter and then we will decide at that point and time what needs to occur after that. Okay?

Rusthoven Thank you very much.

Tuohy Thank you.